could not be deemed to impose undue burden on interstate commerce so as to be void under § 1983 and Commerce Clause).

5. If Cohen sought to challenge the constitutionality of the operative Florida Statute, he should have filed an action against or joined the Department of Revenue. *See Department of Revenue v. Kuhnlein,* 646 So. 2d 717 (Fla. 1994) (Florida residents brought an action against the Department of Revenue, not the entity that sought to impose the impact fee, challenging the constitutionality of impact fees which were imposed on cars purchased or titled in other states but subsequently registered in-state); *Barringer v. Griffes,* 1 F. 3d 1331 (2d Cir. 1993) (plaintiff filed suit against the Vermont Motor Vehicle Commissioner seeking declaratory and injunctive relief based on their claim that the Vermont Motor Vehicle Purchase and Use Tax violated the Commerce Clause).

6. This is not an appropriate venue for a constitutional challenge and, therefore, no federal question is present. Cohen is looking for yet another bite at the apple and a chance at a third appeal. Based on the foregoing, Cohen's request for a certificate certifying that a federal question was raised and decided should be denied.

WHEREFORE, World Omni's requests that the Court deny Cohen's Request, in the alternative, For a Certificate Certifying that a Federal Question was Raised and Decided, together with such other and further relief as the Court may deem just and proper.

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(561) 394-2180

By: /s/ Mitchel Chusid
MITCHEL CHUSID
Fla Bar No. 879282
ALLISON KAY GRANT
Fla. Bar No. 858330

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 11th day of March, 2005 to: Richard D. Cohen, 21870 Cartagena Drive, Boca Raton, Florida 33428; and to Steven M. Goldsmith, Esq., 5355 Town Center Road, Suite 801, Boca Raton, Florida 33486.

RITTER CHUSID BIVONA & COHEN, LLP
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By: /s/ Mitchel Chusid
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REPLY APPENDIX B

[LOGO] **State of Florida**
Department of Revenue

Sales and Use Tax	**Technical Assistance Advisements (2000 – To Date)**

SUMMARY

QUESTION: Should sales tax be imposed on a motor vehicle lease, when the vehicle was leased in New Jersey and later brought into and registered in Florida?

ANSWER – Based on Facts Below: Yes. Section 212.05(1)(c)2., F.S., provides that no tax is due if a taxpayer documents use of a vehicle outside Florida and tax is or was paid on the lease payments in another state. Section 212.06(7), F.S., provides that tax does not apply if a like tax equal to or greater than Florida tax has been lawfully imposed and paid in another state. However, under New Jersey law, tax on the lease of a motor vehicle is lawfully imposed on the lessor, not the lessee. The lessor may choose to collect the tax from the lessee, but is not required to do so. The Department's position, therefore, is that credit cannot be given for any tax paid by the lessee on the lease.

****

Feb 07, 2003

Re: Technical Assistance Advisement 03A-007
XXX ("Taxpayer")
Sales and Use Tax
Motor Vehicle Leased in New Jersey
Section 212.05(1)(c)2., F.S.
Section 212.06(7) and (10), F.S.

Dear:

This response is in reply to your January 15, 2003 petition requesting the Department's issuance of a Technical Assistance Advisement pursuant to s. 213.22, F.S., and Chapter 12-11, F.A.C., regarding the referenced matter and parties. An examination of your petition has established that you have complied with the statutory and regulatory requirements for issuance of a TAA. Therefore, the Department is hereby granting your request for issuance of a TAA.

Stated Facts

In your letter you state the following facts:

> On October 5, 2001[,] I leased an automobile in New Jersey[,] where I resided at the time. Upon relocating to Florida and registering my automobile in this [s]tate, my leasing company added Florida sales tax to my monthly invoices. It is my position that this is "double taxation" and not in accord with the intent of the Florida Statutes.
>
> The New Jersey statutes require that the lessor pay the use tax *when the property is leased.* In essence[,] taxes were paid to the [s]tate of New Jersey for the lease between me and the dealer. I further believe that one would be naive if they did not realize the tax was paid, albeit indirectly, by myself . . . [quote from Section 212.06(7), F.S.]
>
> Since the section of the Florida statute[s] is silent regarding the entity paying the tax in the other jurisdiction, I believe that the tax paid by the lessor at the time of entering into the lease with me should fulfill the requirements of this statute. Requiring Florida taxes from me should

> be considered "double taxation" and not compatible with the intent of the Florida statutes.
>
> I have previously written the Florida Department of Revenue regarding this matter and have enclosed a copy of their "unofficial" response. . . . [Emphasis in original]

In response to a request for documents by the Department, you submitted your lease agreement, motor vehicle retail order, New Jersey leased vehicle registration, Florida vehicle registration, and copies of cancelled checks showing your monthly payments.

Taxpayer's Position

Taxpayer feels that he is being inappropriately taxed twice on the lease of a motor vehicle.

Applicable Authority and Discussion

Section 212.05(1)(c)2., F.S., provides:

> It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state, including the business of making mail order sales, or who rents of furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state.
>
> (1) For the exercise of such privilege, a tax is levied on each taxable transaction or incident, which tax is due and payable as follows:

. . .

(c) At the rate of 6 percent of the gross proceeds derived from the lease or rental of tangible personal property, as defined herein; however, the following special provisions apply to the lease or rental of motor vehicles:

. . .

2. Except as provided in subparagraph 3., for the lease or rental of a motor vehicle for a period of not less than 12 months, sales tax is due on the lease or rental payments if the vehicle is registered in this state; provided, however, that no tax shall be due if the taxpayer documents use of the motor vehicle outside this state and tax is being paid on the lease or rental payments in another state.

Section 212.06(7), F.S., provides:

The provisions of this chapter do not apply in respect to the use or consumption of tangible personal property or services, or distribution or storage of tangible personal property for use or consumption in this state, upon which a like tax equal to or greater than the amount imposed by this chapter has been lawfully imposed and paid in another state, territory of the United States, or the District of Columbia. The proof of payment of such tax shall be made according to rules and regulations of the department. If the amount of tax paid in another state, territory of the United States, or the District of Columbia is not equal to or greater than the amount of tax imposed by this chapter, then the dealer shall pay to the department an amount sufficient to make the tax paid in the other state, territory of the United States, or the District of Columbia and in this

> state equal to the amount imposed by this chapter.

Section 212.06(10), F.S., provides:

> No title certificate may be issued on any boat, mobile home, motor vehicle, or other vehicle, or, if no title is required by law, no license or registration may be issued for any boat, mobile home, motor vehicle, or other vehicle, unless there is filed with such application for title certificate or license or registration certificate a receipt, issued by an authorized dealer or a designated agent of the Department of Revenue, evidencing the payment of the tax imposed by this chapter where the same is payable. A presumption of sales and use tax applicability is created if the motor vehicle is registered in this state. For the purpose of enforcing this provision, all county tax collectors and all persons or firms authorized to sell or issue boat, mobile home, and motor vehicle licenses are hereby designated agents of the department and are required to perform such duty in the same manner and under the same conditions prescribed for their other duties by the constitution or any statute of this state. All transfers of title to boats, mobile homes, motor vehicles, and other vehicles are taxable transactions, unless expressly exempt under this chapter.

Taxpayer's lease agreement contains the following language relating to tax:

> I agree to pay when due or reimburse Lessor for the following estimated amount (which may vary if I change the Vehicle's garaging address) for title/license/registration/official fees and taxes over the term of my Lease, whether paid at lease

> signing, included in my monthly payments or assessed otherwise: $1,155.45. The actual total of fees and taxes may be higher, or lower, depending on the tax rates in effect, or the value of the Vehicle at the time a fee or tax is assessed.

Taxpayer's retail order form also provides:

> 9. PAYMENT OF SALES AND USE TAXES. The price for the motor vehicle specified on the face of this Order includes reimbursement for certain Federal Excise taxes but does not include sales taxes and use taxes (Federal, State or Local) or Luxury Tax, unless expressly stated. Customer assumes and agrees to pay, unless prohibited by law, any such sales, use or occupational taxes imposed on or applicable to the transaction covered by this Order, regardless of which party may have primary tax liability. In the event Customer elects to lease the motor vehicle covered by this Order, Dealer acknowledges liability for the upfront payment of New Jersey Use Taxes, which amount shall in turn be factored into the amount of the monthly lease payment charged to the Customer.

The Department cannot determine from the lease agreement the exact amount of tax assessed on the lease of the vehicle. However, for the reasons detailed below, the amount of tax paid by Taxpayer, or even a determination that the Taxpayer paid any tax at all, on the lease is not necessary for our determination of the issue.

Under New Jersey sales and use tax law, long-term leases are treated differently than rentals for sales and use tax purposes. The lessor is considered to be the end user of the leased property and the one who is responsible for paying use tax when the property is leased. The lessor is not

required to collect sales tax from the lessee; however, nothing in the New Jersey law prohibits a lessor from increasing the lessee's monthly payment to recover this tax expense. Therefore, the Department finds that, because New Jersey tax is lawfully imposed on the lessor and not on the lessee (even though the lessee may be contractually obligated to reimburse the lessor), credit cannot be allowed as provided in Section 212.06(7), F.S.

Under Section 212.06(10), F.S., there is a presumption of use in this state if a motor vehicle is registered in this state and thus becomes subject to Florida sales tax. Based on the facts presented in your letter, Florida sales tax is due on the monthly lease payments from the time the vehicle was brought into this state.

Advisement

Florida sales tax is due on the lease of a motor vehicle entered into in New Jersey, when the vehicle is subsequently brought into Florida and registered in this state.

Closing Statement

This response constitutes a Technical Assistance Advisement under Section 213.22, F.S., which is binding on the Department only under the facts and circumstances described in the request for this advice as specified in Section 213.22, F.S. Our response is predicated on those facts and the specific situation summarized above. You are advised that subsequent statutory or administrative rule changes or judicial interpretations of the statutes or rules upon which this advice is based may subject similar future

transactions to a different treatment than expressed in this response.

You are further advised that this response, your request and related backup documents are public records under Chapter 119, F.S., and are subject to disclosure to the public under the conditions of Section 213.22, F.S. Confidential information must be deleted before public disclosure. In an effort to protect confidentiality, we request you provide the undersigned with an edited copy of your request for Technical Assistance Advisement, the backup material and this response, deleting names, addresses and any other details which might lead to identification of the taxpayer. Your response should be received by the Department within 15 days of the date of this letter.

If you have any further questions with regard to this matter and wish to discuss them, you may contact me directly at (850) 488-9669.

Sincerely,

Tammy S. Manke
Technical Assistance & Dispute Resolution

TSM/
Control No: 53420